

Posted: February 25, 1997 2:30 p.m.

Order 97-2-26



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 25th day of February, 1997

Served: March, 3, 1997

Applications of

**AMERICAN AIRLINES, INC.
CONTINENTAL AIRLINES, INC.
DELTA AIR LINES, INC. , and
SWISSAIR
NORTHWEST AIRLINES, INC.
UNITED AIR LINES, INC., and
LUFTHANSA GERMAN AIRLINES**

for designations to provide third-country
code-share services (U.S.-India) and related
regulatory authorities

**Docket OST-96-1968
OST-96-1970
OST-96-1969 and
Undocketed
OST-96-1967
OST-96-1966**

ORDER AUTHORIZING THIRD-COUNTRY CODE-SHARE SERVICES

SUMMARY

By this order, we grant the necessary regulatory authorities to Delta Air Lines, Inc., Northwest Airlines, Inc., and United Air Lines, Inc., to serve the U.S.-India market through code-share arrangements with third-country carriers. One designation will remain available for future authorization.

BACKGROUND

Under a Memorandum of Consultations (MOC) between the United States and India, signed December 2, 1995, effective after April 1, 1997, four U.S. airlines may commence cooperative service arrangements with third-country airlines in the U.S.-India market.¹ With

¹ Under the revised Schedule agreed to in the MOC, U.S. carriers may operate air services over the following route: "From the United States via points in Canada, Europe, U.K., Ireland, Africa, and Asia to Delhi, Calcutta, Bombay, and Madras, and one Indian point to be selected by the Government of the United States for services operated through cooperative services arrangements only, and beyond to points in Myanmar, Sri Lanka, Thailand, and beyond to the United States over various routes." Services operated to/from/through Madras in conjunction with service to Singapore are limited to the operation of up to seven weekly frequencies with local traffic rights between Madras

the minor exception noted in footnote 1, these services are not subject to any frequency limitations.²

By notice dated October 31, 1996, we invited all interested U.S. carriers to file applications to use the available third-country code-share opportunities.

APPLICATIONS

Applications were filed by American Airlines, Inc., Continental Airlines, Inc., Delta, Northwest, and United. Each of the applicants proposes to operate code-share service in the U.S.-India market via an intermediate European point with a third-country carrier--American with British Airways via London, Continental with Air France via Paris, Delta with Swissair via Zurich, Northwest with KLM Royal Dutch Airlines via Amsterdam, and United with Lufthansa German Airlines via Frankfurt. Each of the code-share alliances would provide service between various U.S. points and Mumbai (formerly known as Bombay). The alliances of American, Continental, and Delta would also serve Delhi. In addition, the American/British Airways alliance would also serve Calcutta and Madras, and the United/Lufthansa alliance would serve Madras. The proposed operations of the carriers are fully described in the attached Appendix.

American states that the underlying code-sharing agreement with British Airways and the related requests for statements of authorization will be submitted in conjunction with the carriers' application under 49 U.S.C. § 41308 and § 41309 for approval of and antitrust immunity for the alliance agreement.³

Continental states that although there is currently no bilateral agreement between the U.S. and France, the two countries have agreed to begin negotiations aimed at concluding a comprehensive new bilateral agreement, and Continental plans to begin its U.S.-France-India code-sharing arrangement with Air France assuming resolution of the bilateral issues and timely approval of their code-share agreement.

(footnote continued)

and Singapore. The two delegations agreed that pending the entry into force of the revised Schedule, in accordance with the provisions of Article 12 of the Agreement, the designated airline(s) of either Contracting Party will be permitted to conduct operations in accordance with the revised Schedule on a provisional basis with immediate effect. *See* U.S.-India Memorandum of Consultations, dated December 2, 1995.

² If any U.S. airline operating direct services as of April 1, 1997, chooses to substitute code-share services for direct services, such code-share services shall not count against the four U.S.-carrier right, noted above, as long as (i) the U.S. does not designate another airline to replace that airline for direct operations; (ii) the substitution does not result in a net increase in frequencies operated by that airline; and (iii) the number of frequencies for which the airline substitutes cooperative services operations are operated for at least one season.

³ American and British Airways filed that application on January 10, 1997, in Docket OST-97-2058.

Delta and Swissair filed a joint application for a statement of authorization under Part 212 of the Department's regulations to enable Swissair to display Delta's "DL" designator code on Swissair's flights between Zurich, on the one hand, and Mumbai and Delhi, on the other hand.

Northwest states that it and KLM have held all the requisite underlying U.S. economic authority to code-share in the U.S.-India market for almost three years.

United and Lufthansa filed a joint application for amendment of Lufthansa's statement of authorization last issued by Order 96-3-37 to include the right to code share for United on flights between Frankfurt and Madras.⁴

RESPONSIVE PLEADINGS

American, Continental, Delta, Northwest, and United filed consolidated answers; American, Continental, Delta, and United filed replies.

American and Continental argue that since neither carrier currently serves India, they should receive priority for the first two awards. American also argues that grant of its application is in the public interest because American and British Airways propose to serve four destinations in India, more than any of the other applicants and because British Airways provides more service to India than any of the other third-country code-share partners, and these facts insure maximum use of the available rights. Continental argues that the traveling public will benefit from the enhanced competition Continental's proposed U.S.-India code-share service would provide, namely, the addition of a whole new network of U.S.-India on-line service.

Delta, Northwest, and United argue that the applications of American and Continental should be dismissed because neither has a currently viable service proposal in the absence of fundamental revisions to the bilateral aviation relationships with the U.K. and France, respectively, and approval by the U.S. Government of the carriers' proposed alliances. They also argue that in view of these circumstances, their applications are not mutually exclusive and they should be granted immediately.

In reply, American argues that its proposed code-share service is authorized under Bermuda 2 and that it should receive one of the four code-share designations because its service would be superior to any of the other applicants.

Continental argues that an award to Continental could be made contingent on approval of the Continental/Air France code-share arrangement and that carriers, such as Continental and American, without their own direct service between the U.S. and India should be favored over carriers, such as Delta, Northwest and United, that currently operate, or in the near future, will operate their own flights in the market.

⁴ Order 96-3-37 included a statement of authorization for Lufthansa to code share for United on services between the U.S. and Mumbai via Frankfurt.

Delta and United reiterate their arguments that there is no need for a carrier selection proceeding because only three applicants--Delta, Northwest, and United--are eligible for an award of the four valuable opportunities.

DECISION

We have decided to select Delta, Northwest, and United to provide U.S.-India third-country code-share services. We will retain one selection for future authorization.

Of the five applications before us, only three--those of Delta, Northwest, and United--propose services that can currently be exercised in April when the rights become available. The operations proposed by these carriers are fully consistent with the aviation agreements between the United States and the homelands of their respective code-share partners. Moreover, the arrangements between these U.S. carriers and their respective code-share partners have been approved and, thus, their operations can be implemented as proposed.

The services proposed in the applications of Continental/Air France and American/British Airways, on the other hand, cannot now be operated. There is currently no bilateral aviation agreement with France. Moreover, there is insufficient reciprocity with France to warrant approval of joint operations by Continental and Air France. Indeed, France has followed a consistent policy not to authorize new code-share operations pending conclusion of a new agreement between the two countries. Similarly, while the U.S.-U.K. aviation agreement provides for various code-share operations, including those proposed here, the services proposed by American and British Airways are part of a more comprehensive alliance, which the carriers indicate that they will not implement without antitrust immunity. The alliance has not received either United States Government or foreign regulatory approval. Thus, as neither Continental nor American is currently in a position to implement its proposed code-share services, we conclude that neither is eligible at this time for award of the third-country code-share authority at issue. In view of these circumstances, we will dismiss their applications without prejudice. We will entertain applications from those carriers for use of any remaining opportunities available when those carriers are in a position actually to institute service with a code-share partner.

We are not prepared to delay authorization of the other three applications pending resolution of the bilateral and regulatory requirements necessary for consideration of the proposed American/British Airways and Continental/Air France code-share services. The U.S.-India third-country code-share opportunities available after April 1, 1997, represent valuable operating rights that the United States obtained in exchange for rights for Indian carriers. We conclude that the public interest calls for use of those U.S.-carrier rights. As we stated above, Delta, Northwest, and United are all in a position to operate their proposed code-share operations, and plan to begin their services in April when the rights become available. Therefore, we conclude that authorization of their services at this time is in the public interest and will ensure prompt use of these valuable opportunities. Moreover, we find that approval of their applications will provide important public benefits. Delta would provide service from six U.S. gateways and serve two points in India--Mumbai and Delhi--via Zurich with its code-share partner Swissair. Delta would expand its service to Mumbai where it currently provides service with its own aircraft and restore service to Delhi. Northwest would provide service from twelve U.S. gateways and serve Mumbai via Amsterdam with its code-share partner KLM. United would provide service from ten U.S. gateways and serve two points in India--Mumbai and Madras--via Frankfurt with its code-share partner Lufthansa. We find that these

services will increase the price and service options of travelers and shippers in the U.S.-India market and are in the public interest.

ACCORDINGLY,

1. We grant the applications of the following carriers to provide scheduled foreign air transportation of persons, property, and mail in the U.S.-India market under third-country code-share arrangements: Delta Air Lines, Inc., under a code-share arrangement with Swissair in Docket OST-96-1969; Northwest Airlines, Inc., under a code-share arrangement with KLM Royal Dutch Airlines in Docket OST-96-1967; and United Air Lines, Inc., under a code-share arrangement with Lufthansa German Airlines in Docket OST-96-1966;
2. We grant the joint application of Delta Air Lines, Inc., and Swissair for a statement of authorization to enable Swissair to display Delta's designator code on Swissair's flights between Zurich, Switzerland, on the one hand, and Mumbai and Delhi, India, on the other hand;
3. We grant the joint application of United Air Lines, Inc., and Lufthansa German Airlines for amendment of Lufthansa's statement of authorization last issued by Order 96-3-37 to include the authority for Lufthansa to display United's designator code on Lufthansa's flights between Frankfurt, Germany, and Madras, India;⁵
4. The authorities granted in paragraphs 1, 2, and 3, above, will be effective for a period of two years from the date of service of this order;
5. The code-share operations authorized by this order are subject to the following conditions:
 - (a) the subject foreign air transportation shall be sold in the name of the carrier holding out the service in computer reservation systems and elsewhere, and that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (*i.e.*, the ticket); and
 - (b) Swissair, KLM Royal Dutch Airlines, and Lufthansa German Airlines shall not permit the code of its U.S. carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition;
6. We require Delta Air Lines, Inc., Northwest Airlines, Inc., United Air Lines, Inc., Swissair, KLM Royal Dutch Airlines, and Lufthansa German Airlines to comply with the rules for airline designator code-sharing set forth in 14 CFR § 399.88 of the Department's regulations, and any amendments to the Department's regulations concerning code-share arrangements that may be adopted;

⁵ Lufthansa currently has a statement of authorization to code share for United on services between the U.S. and Mumbai via Frankfurt.

7. We dismiss without prejudice the applications of American Airlines, Inc., in Docket OST-96-1968, and the joint application Continental Airlines, Inc., and Compaigne Nationale Air France, S.A. in Docket OST-96-1970 for the necessary regulatory authorities to operate U.S.-India third-country code-share services; and

8. We will serve this order on American Airlines, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; Northwest Airlines, Inc.; United Air Lines, Inc.; Compaigne Nationale Air France, S.A.; Swiss Air Transport Company, Ltd.; Deutsche Lufthansa, A.G. d/b/a Lufthansa German Airlines; KLM Royal Dutch Airlines; British Airways Plc; the Ambassador of India in Washington, D.C.; the Department of State (Office of Aviation negotiations); and the Federal Aviation Administration (Air Carrier Branch, AFS-200).

By:

PATRICK V. MURPHY
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://www.dot.gov/general/orders/aviation.html>.*

U.S. Carrier	Code-share Partner	U.S. Gateways	Intermediate Point	India Points	Frequency	Startup Date
American ¹	British Airways	Boston, Chicago, Los Angeles, Miami, and New York (JFK)	London	Calcutta, Delhi, Madras & Mumbai	Not Specified	4/1/97
Continental ²	Air France	Newark and Houston	Paris	Delhi & Mumbai	Not Specified	6/1/97
Delta ³	Swissair	Atlanta, Boston, Chicago, Cincinnati, Los Angeles, and New York (JFK)	Zurich	Delhi & Mumbai	3 weekly to Delhi and 4 weekly to Mumbai	4/1/97
Northwest ⁴	KLM	Atlanta, Boston, Chicago, Detroit, Houston, Los Angeles, Memphis, Minneapolis/St. Paul, Newark, New York (JFK), San Francisco, and Washington (IAD)	Amsterdam	Mumbai	3 weekly	4/1/97
United ⁵	Lufthansa	Atlanta, Boston, Chicago, Dallas/Ft. Worth, Los Angeles, Miami, Newark, New York (JFK), San Francisco, and Washington (IAD)	Frankfurt	Madras & Mumbai	3 weekly to Madras and 5 weekly to Mumbai	4/1/97

¹ American seeks the necessary certificate authority to provide the proposed service.

² Continental states that it holds the underlying authority to operate the proposed service: certificate authority on Route 29-F to operate U.S.-India service; exemption authority to operate between Newark and Houston, on the one hand, and Paris, on the other hand; and exemption authority to integrate its existing authority on Route 29-F with its exemption authority.

³ Delta states that it holds the necessary underlying route authority on Route 616 to implement the proposed services.

⁴ Northwest states that it and KLM already hold the requisite underlying U.S. operating authority for KLM to display Northwest's code on KLM's flights between Amsterdam and both Delhi and Mumbai, but that Northwest is unable to code-share on KLM's Amsterdam-Delhi flights at this time because the flights overfly Afghanistan for which there is an Federal Aviation Administration overflight prohibition. In the event circumstances change, Northwest states that it would be interested in adding its code to KLM's flights to Delhi as well.

⁵ United states that it has the underlying authority to operate the service under its certificates for Routes 57 and 603 and its route integration exemption confirmed by Order 95-5-17.